

PETITIONER:
SMT. BHAGTI (DECEASED) THROUGH HER L.RS. JAGDISH RAM SHARMA

Vs.

RESPONDENT:
THE STATE OF HARYANA

DATE OF JUDGMENT: 27/01/1997

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This special leave arises from order of the Division Bench of the Punjab & Haryana High Court, made on August 18, 1992 in Civil Revision No. 73 of 1991.

The learned counsel for the petitioner has contended that the decision of this Court in Babua Ram & Ors. v. State of U.K. & Narc. [(1995) 2 SC 689] was referred to a Constitution Bench in Jose Antonio Cruz Dos R. Rodrigueses & Anr. v. Land Acquisition Collector & Anr. [1996] 1 SCC 88 = J.T. 1995 (8) SC 3281 and thereafter cases with similar facts were also referred. We find that the statement is not accurate and in the facts of this case, the question does not arise. The admitted position is an under.

Notification under Section 4(1) of the Land Acquisition Act, 1984 [for short the 'Act'] was published on June 26, 1973 acquiring 133.24 acres of land situated in Village Dara Kalan, District Kurukshetra for development and utilisation of the land for residential purposes. The Collector in his award dated July 17, 1975 awarded compensation at the rate of Rs. 3/- per square yard. The appellant did not seek any reference under Section 18. However, on reference sought by others, the district judge in his award and decree dated October 3, 1981 enhanced the compensation to Rs. 7/- per sq. yd. Dissatisfied therewith, those claimants filed appeal in the High Court. The High Court by judgment and decree dated March 14, 1990 further enhanced the compensation to Rs. 37 per sq. yd. Thereafter, the petitioner filed an application within the prescribed limitation period of 30 days from the date of the judgment of the High Court under Section 28-A of the Act for payment of the enhanced compensation. The Land Acquisition Collector by Order dated September 5, 1990 dismissed the application but the District Judge re-determined the compensation by Order dated December 24, 1991. The revision application, on reference by a learned single Judge, was allowed by the Division Bench setting aside the reference Court award. Thus, this special leave.

It is contended that the petitioner is entitled to re-determination of compensation on par with others and the question of limitation does not stand in the way. The question, therefore, is as to when the limitation begins to

run for the purpose of filing of an application under Section 28-A of the Act? The Amendment Act 68 of 1984 introducing Section 28-A had come into force with effect from September 24, 1984. Section 28-A envisage giving of benefit to a person who had accepted the award made under Section 11 without protest and did not avail of the reference under Section 18 for further enhancement and others had the ward of enhanced compensation. He has been given right to make a written application to the L.A.O. within 30 days from the date of the award of the Court excluding the time taken to obtain a certified copy of the award of the court. IT is now fairly well settled legal proposition that the award of the court is the award of the reference court under Section 18. That is clear from the statement of the objective and reasons as also from the unequivocal language used in Section 28-A(1) of the At. It is equally well settled legal position that once time has begun to run, it will continue to run until it is stayed by an appropriate court. The remedy, thereafter stands barred. The proviso to Section 28-A(1) only excludes the time actually taken in obtaining the certified copy, while computing the period of three months limitation prescribed under Section 28-A(1). In other words, the time take to obtain certified copy alone is to be excluded in computation of limitation of three months. The reference in Jose Antonio's case was confine to the question as to which of the two awards, when there are more than one award passed by the reference Court in respect of the land covered under the same notification published under Section 4(1), would give cause of action and to the question limitation to file application under Section 28-A(1). In other words, the question therein was which of the two dates of two award, furnishes the period of limitation of three months. In the present case in hand that question does not arise. There are no two awards of the reference Court. In Scheduled Caste Co-op. Land Owning Society Ltd. v. Union of India [AIR 1991 SC 730], a Bench of three Judges of this Court held that "It is obvious on a plain reading of Sub-Section (1) of Section 28-A that it applies only to those claimants who had failed to seek a reference under Section 18. The redetermination has to be done by the Collector on the basis of the compensation awarded by the Court in the reference under Section 18 and an application in that behalf has to be made to the Collector within 30 days from the date of the award. The order of the High Court does not give right of file application under Section 28A(1).

In State of Punjab V/s. Raghbir Singh & Ors. [1995] Supp. 2 SCC 679) on similar facts the ward was accepted without protest and no reference was sought for by the respondents. On reference under Section 18 at the instance of others, the District Judge confirmed the award of the Collector but on appeal the High Court enhanced the compensation. When application under Section 28-A (1) came to be filed after the High Court judgment. It was held that the remedy under Section 28-A was unavailable as the decree of the High Court is not that of the reference Court under Section 18. The limitation period had begun to run from the date of the award of the District Judge. In State of Punjab V/s. Raghubir Singh [(1989) 3 SCR 316 at 339], a Constitution Bench had held that the words "any such award" cannot have any reference to the appellate orders of the High Court or of the Supreme Court. In the context of Section 30 (2), it must have reference to the award of the Collector or the Civil Court made between April 30, 1982 and September 24, 1984. In other words, the Constitution Bench

affirmed that the award of the Court is of the reference Court or the Collector as the case may be. In D. Venkamma & Ors. V/s. Special Tehsildar (LA) Unit-IV, Janagareddigudem. W.G. District, Elugi, A.P. [1996] (1) 851, under similar facts as in this case, the award came to be made by the District Judge on reference at the instance of others covered under the same notification but no application came to be made immediately thereafter. The Civil Court enhance compensation on November 26, 1983. The High Court's award was made on February 1, 1989. Thereafter, on May 12, 1989, application under Section 28-A (1) was filed seeking redetermination of the compensation. It was held that court referred in Section 28 is the reference Court under Section 18 and not the High Court and that, therefore, the application filed, though within limitation from the date of the High Court's judgment, was not maintainable. In U.P. State Industrial Development Corpn. Ltd. V/s. State of U.P. & Ors. [(1995) 2 SCC 766], an application for redetermination of the compensation was filed after the award of the reference Court, was pending appeal in the High Court. The Appellant objected to the redetermination. A Bench of three Judges of this Court had held that since appeal was pending, the Collector was not justified in redetermining the compensation. The award of the Collector was set aside the matter was directed to be kept pending till the appeal was disposed of in the High Court. In State of Maharashtra V/s. Manakchand Pyarmal & Ors. [(1996) a SCC 297], same direction was given to keep the application under Section 28-A pending till the appeal against the reference Court awarded was decided by the High Court. In State of Punjab V/s. Raghubir Singh & Ors. [(1995) Supp. 2 SCC 679] it was held that an application for re-determination of compensation can be made only on the basis of the judgment of the reference Court and the same must be made within the limitation period prescribed by Section 28-A (1) of the Act. Therein, the facts were that award was made by the Collector on December 22, 1983. The reference Court by judgment dated September 10, 1990 enhanced the compensation. Application filed on January 2, 1991 under Section 28-A seeking redetermination of the compensation on the basis of the judgment of the High Court, was dismissed by the Collector. On revision application, the High Court directed by order dated August 14, 1992 redetermination of the compensation on the basis of its earlier judgment dated September 12, 1990. On those facts this Court held that the application for redetermination was barred by limitation. Appeal was allowed and the order of the High Court was set aside.

Thus only those claimants who had failed to apply for a reference under Section 18 of the Act are conferred with the right to apply for redetermination under Section 28A(1). But all those who had not only sought a reference under Section 18 but had also filed an appeal in the High Court against the award made by the reference court are not entitled to avail of the remedy under Section 28A. Equally, the right and remedy of reference Court under Section 18 had enhanced the compensation in an award and decree under section 26. Within three months from the date of the reference court excluding the time taken under proviso, the applicant whose land was acquired under the same notification but who failed to avail the remedy under Section 18, would be entitled to avail the right and remedy under Section 28A. The order and judgment of the High Court does not give such right. Thus, this Court held that Section 28-A does not apply to an order made by the High Court for redetermination of the compensation. Thus, we hold that the question of reference

to the Constitution Bench does not arise. The claimants are not entitled to make an application for redetermination of compensation under Section 28-A(1) after the judgment of the High Court not are the claimants entitled to avail of that award which is more beneficial to the claimants, i.e., the High Court judgment.

The special leave petition is accordingly dismissed.

JUDIS